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In the Supreme Court of the United States

OCTOBER TERM, 1936

No. 687

HASKINS BROS. & CO., PETITIONER

v.

GEORGE W. O'MALLEY, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF NEBRASKA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE RESPONDENT

OPINION BELOW

The District Court wrote no opinion. Its order sustaining the demurrer to petitioner's petition appears in the record at pp. 25–26.

JURISDICTION

The order of the District Court was entered on December 16, 1936 (R. 25). An appeal was prayed for in the Circuit Court of Appeals for the Eighth Circuit on December 24, 1936 (R. 26–27), and was allowed on the same day (R. 29–30). A petition for a writ of certiorari was filed in this Court prior

to hearing or submission of the appeal in the Circuit Court of Appeals, and was granted on February 15, 1937 (R. 32). Jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether Section 602½ (a) of the Revenue Act of 1934, imposing a tax of three cents per pound upon the processing of Philippine coconut oil, is a valid exercise of the taxing power of Congress.

STATUTES AND OTHER MATERIAL INVOLVED

Section 602½ of the Revenue Act of 1934 (c. 277, 48 Stat. 680), and relevant sections of the Constitution of the Philippine Islands are set forth in the Appendix to the Brief for the United States in No. 659, *Cincinnati Soap Co. v. United States.*

STATEMENT

On November 12, 1936, Haskins Bros. & Co., petitioner herein, filed a petition at law in the United States District Court for the District of Nebraska (R. 1), praying recovery against respondent in the sum of $26,843.02. On December 9, 1936, respondent filed a demurrer to the petition (R. 25). The allegations of the petition, as admitted by the demurrer, may be summarized as follows:

Haskins Bros. & Co. is a corporation organized under the laws of Iowa, with its principal office and place of business in Omaha, Nebraska (R. 1).

It is now, and has been for many years, engaged in the making of soap and allied products (R. 3).

During the months of June, July, August, September, and October 1935, petitioner used in the manufacture of its soap 894,767⅓ pounds of coconut oil wholly the product of the Philippine Islands. Pursuant to Section 602½ of the Revenue Act of 1934, petitioner filed returns and paid to respondent collector a tax of three cents per pound upon the processing of this oil. The total amount of the tax was $26,843.02 (R. 2).

On January 13, 1936, petitioner filed with the Bureau of Internal Revenue a claim for the refund of the tax, upon the ground that it was unconstitutional (R. 2, 17–21). The claim was denied on February 5, 1936 (R. 3).[1] This suit for refund was filed on November 12, 1936 (R. 1).

The demurrer was sustained by the District Court on December 12, 1936 (R. 25, 26). Petition for an appeal was filed and allowed on December 24, 1936 (R. 26, 29). Before argument or submission of the case in the Circuit Court of Appeals the present writ of certiorari was filed, and was allowed on February 15, 1937 (R. 32).

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[1] The petition contains further allegations with respect to the use of coconut oil in soap manufacturing and otherwise (R. 3–5), the methods by which it is purchased (R. 3–4) and the details of the history of the Philippine Independence Act and the proceedings under it (R. 5–6, as well as many legal conclusions as to the invalidity of the tax (R. 6–13). To the extent that these further allegations are material they are referred to in the argument, *infra*.

ARGUMENT

The contentions of petitioner in this case are substantially the same as those advanced by petitioner in *Cincinnati Soap Co.* v. *United States,* No. 659, which is to be argued with this case. For that reason, we respectfully refer the Court to the brief filed on behalf of the respondent in that case for the full argument in support of the validity of Section 602½.

There are, however, two further points raised by petitioner in the present case which may be noted.

1. Petitioner alleges (Point IV) that the provision for payment to the Philippine Islands of the proceeds of the present tax constitutes an unconstitutional delegation of legislative power. The contention is without merit.

The Constitution does not require that Congress specify the details of the expenditure of public money. Article I, Section 9, clause 7 of the Constitution does not affect of power of *appropriation;* it is rather a restriction upon the power of expenditure. *Collins* v. *United States,* 15 Ct. Cls. 22, 35. Congress, in other words, has the power to determine the amount of the expenditure and the purpose for which the money is to be spent, but is at complete liberty to specify as few or as many details with regard to the disbursement of the money as it wishes. See Story, *Constitution of the United States,* Sec. 1348; *The Federalist,* No. 72 (Hamilton), p. 450, H. Doc. No. 854, 62d Cong.,

2d Sess., p. 72. See also *United States* v. *Hansen*, 167 Fed. 881, 884–885 (C. C. A. 9th); *People* v. *Tremaine*, 252 N. Y. 27; *State ex rel. Board of Regents* v. *Zimmerman*, 183 Wis. 132; *Moers* v. *City of Reading*, 21 Pa. 188, 202; *Holmes* v. *Olcott*, 96 Ore. 33. This power to appropriate without detailing the manner of expenditure is borne out not only by the practice in England at the time of the adoption of the Constitution (See e. g., May, *Constitutional History* (1912 ed.) Vol. I, pp. 158–159; Civil List Act of 1782, 22 Geo. III, c. 82; 27 Geo. III, c. 33), but also by the consistent exercise of such a power by Congress under the Constitution. See, *e. g.*, Act of August 7, 1789, c. 9, 1 Stat. 53; Act of September 29, 1789, c. 23, 1 Stat. 95; Act of March 26, 1790, c. 4, 1 Stat. 104; Act of March 3, 1839, c. 89, 5 Stat. 355; Act of July 31, 1861, c. 28, 12 Stat. 283; Deficiency Act of March 9, 1898, c. 56, 30 Stat. 273. Indeed, there are a series of statutes which are almost identical with the present Act, under which duties and internal revenue collections have been paid into the Philippine Treasury. Act of March 8, 1902, c. 140, 32 Stat. 54; Act of August 5, 1909, c. 6, 36 Stat. 11, 84–85; Act of October 3, 1913, c. 16, 38 Stat. 114, 193; Act of September 21, 1922, c. 356, 42 Stat. 858, 935; Act of June 17, 1930, c. 497, 46 Stat. 590, 686. Cf. Act of April 12, 1900, c. 191, 3 Stat. 77. The considered exercise by Congress of this power to appropriate money without detailing the character of the expenditure is, we submit, very persuasive evi-

dence of the existence of the power. *Field* v. *Clark*, 143 U. S. 649, 691; *United States* v. *Midwest Oil Co.*, 236 U. S. 459, 472, 473; *United States* v. *Curtiss-Wright Export Corp.*, No. 98, decided December 21, 1936.[2]

Moreover, the principle is peculiarly applicable in the present case. Like the situation which was before this Court in *United States* v. *Curtiss-Wright Export Corp., supra*, the appropriation is within the category of affairs "external to the United States." The United States is acting, with regard to the Philippines, "as a member of the family of nations, [with] right and power * * * equal to the right and power of other members of the international family." When Congress is acting in that capacity the Court "will hesitate long before limiting or embarrassing such powers". *Mackenzie* v. *Hare*, 239 U. S. 299, 311. As this Court said in *United States* v. *Heinszen & Co.*, 206 U. S. 370, 385:

> But the premise upon which this proposition rests presupposes that Congress in dealing with the Philippine Islands may not, growing out of the relation of those islands to the United States, delegate legislative au-

[2] The application of the doctrine of delegation of power to the expenditure of money is extensively treated in the brief for the United States in *United States* v. *Butler*, No. 401, October Term, 1935, 297 U. S. 1, at pp. 86–104, and in brief for the respondent administrator in *Duke Power Co.* v. *Greenwood County*, No. 32, Present Term, at pp. 136–160, to which the Court is respectfully referred.

> thority to such agencies as it may select, a proposition which is not now open for discussion. *Dorr* v. *United States,* 195 U. S. 133 [138].

Moreover, it should be noted that if the payment be considered as the discharge of a moral obligation to the Philippine Islands (See Brief for United States in No. 659, Point III, A, 1), no possible question of delegation can arise.

2. Petitioner also argues that the tax is invalid because the proceeds are appropriated to regulate agriculture within the Philippines in such a fashion as to constitute a regulation of agriculture within the United States. Assuming, as we believe contrary to fact, that the appropriation and the tax are so inseparable that the tax will fall if the provisions for payment be held bad (see brief for the United States in No. 659, Point III, B), nevertheless we submit that the argument is without weight.

There can be no question that Congress has plenary power over the Philippine Islands under Article IV, Sec. 3, of the Constitution, which confers a plenary grant of power over the territories. Insofar as the spending of the proceeds of this tax, therefore, regulates agriculture in the Philippines it is clearly valid. The Tenth Amendment has no application, since the power over the territories of the United States has been "expressly delegated" to Congress.

Nor can it be material that this regulation in the Philippines has an incidental effect upon agricul-

ture in the United States. The effect, if there be any, is merely an economic consequence of a regulation in the Philippines which is unquestionably valid. *United States* v. *Butler*, 297 U. S. 1, upon which petitioner relies, is wholly different. In that case Congress attempted a *direct regulation* of agriculture in the United States by the expenditure of Federal funds. There the effect was direct and immediate; here it is remote. Indeed, the Court in that case expressly distinguished the case of grants of Federal funds which were not conditioned upon the signing of contracts with relation to agricultural production. We submit that the case can have no application to the merely indirect effects of the exercise of a specifically granted power.

CONCLUSION

Wherefore it is respectfully submitted that the decision below should be affirmed.

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